IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 5886 of 2007(A)

PETITIONER:

C.K. ABDULLA, S/O. ALAVI,
AGED 51 YEARS, SECRETARY, AL-AMEEN EDUCATION TRUST
KARAKKAD, KONDOORKARA, PATTAMBI (MANAGEMENT OF
A.M.U.P. SCHOOL, KARAKKAD).

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.

3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD DISTRICT.

4. THE DISTRICT EDUCATIONAL OFFICER,
OTTAPPALAM, PALAKKAD DISTRICT.

5. THE ASSISTANT EDUCATIONAL OFFICER,
PATTAMBI, PALAKKAD DISTRICT.

6. J.V.ABDULLAKUTTY HAJEE,
VARAMANGALATH, PALLIPRAM, ONGALLOOR,
PATTAMBI, PALAKKAD DISTRICT.

Addl.R7: ALIEMMA HAJJUMMA,
W/O. MOITHEEN HAJI,
AGED 62 YEARS, VALIYAPAALAM HOUSE,
EDAPPALAM, VILAYOOR, OTTAPPALAM.
(IMPLEADED AS ADDL. R7 AS PER I.A.3191/07 ALLOWED ON 14.3.2007)

ADDL.R8: K. YOUSUF,
AGED 44 YERS,
S/O. YUSUFFUTTY,
KELATHAPARAMBIL HOUSE,
KONDOORKKARA POST,
KARAKKAD, PALAKKAD DISTRICT.

(IMPLEADED AS ADDL.R8 AS PER I.A.NO.3163/07 ALLOWED ON 14.3.2007)

BY ADV. SRI.SANTHEEP ANKARATH
SRI.SAIGI JACOB PALATTY
SRI.P.K.SURESH KUMAR
GOVERNMENT PLEADER SRI. T.T.MAHMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, ALONG WITH WPC NO. 5955 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.5886 OF 2007

PETITIONER'S EXHIBITS

EXT.P1:	COPY OF TRUST DEED.
EXT.P2:	COPY OF BYE-LAWS OF THE TRUST.
EXT.P3:	COPY OF ORDER NO.K.DIS.C/6095/98 OF THE ASST. EDL. OFFICER, PATTAMBI.
EXT.P4:	COPY OF THE MINUTES OF THE TRUST.
EXT.P5:	COPY OF THE -DO- -DO-
EXT.P6:	COPY OF THE REVISED TRUST DEED.
EXT.P7:	COPY OF THE RESIGNATION LETTER.
EXT.P8:	COPY OF THE LETTER OF R6.
EXT.P8(A):	COPY OF THE LETTER OF THE ORDER NO.G(1)/46131/2004 OF R2.
EXT.P9:	COPY OF THE APPLICATION FOR CHANGE OF MANAGEMENT FILED BY R6.
EXT.P10:	COPY OF THE ORDER NO.G1-46131/2004/K.DIS OF THE DIRECTOR.
EXT.P11:	COPY OF THE ORDER NO.G1/40528/05/DPI/K.DIS. OF R2.
EXT.P12:	COPY OF THE LETTER OF THE PETITIONER.
EXT.P13:	COPY OF THE ORDER NO.K.DIS.6265/06/GI/DPI OF R2.
EXT.P14:	COPY OF JUDGMENT OF THIS HON'BLE COURT IN W.P.(C)NO.14168/2006.
EXT.P15:	COPY OF THE ARGUMENT NOTES OF THE PETITIONER.
EXT.P15(a):	COPY OF THE G.O.(RT)NO.641/07/G.EDN. OF THE GOVERNMENT.
EXT.P16:	COPY OF THE AFFIDAVIT FILED IN O.S.NO.469/2005 BEFORE THE MUNSIFF COURT, OTTAPPALAM.
EXT.P17:	COPY OF THE COMPLAINT FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE.
EXT.P18:	COPY OF THE LETTER OF THE PATTAMBI POLICE STATION.
EXT.P19:	COPY OF CHEQUE DATED 15.11.2003 WITH THE 6TH RESPONDENT'S SIGNATURE ON THE BACK SIDE.
EXT.P20:	COPY OF THE ORDER DATED 3.10.2005 OF THE AEO.
EXT.P21:	COPY OF RESIGNATION LETTER OF SMT.ALEMMA HAJJUMMA.

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EXT.P22: COPY OF RESIGNATION LETTER OF SRI. K.P. YUSUFF.

EXT.P23: COPY OF PLAINT IN O.S.NO.469/2005 DATED 6.12.2005.

6TH RESPONDENT'S EXHIBITS.

EXT.R6(A): COPY OF MINUTES OF MEETING DT. 23.10.2003 OF AL-AMEEN EDUCATION TRUST.

EXT.R6(B): COPY OF MINUTES OF MEETING DT. 23.9.2004 OF AL-AMEEN EDUCATIONAL TRUST.

EXT.R6(C): COPY OF CONSENT LETTER DT. 1.9.2004 ISSUED BY R6.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos. 5886, 5955 OF 2007

Dated this the 22nd day of October, 2007

JUDGMENT

The petitioner claims to be the Secretary of Al-Ameen Educational Trust, which is the educational agency of A.M.U.P. School, Karakkad. He is challenging Ext.P15 (a) order of the Government of Kerala, by which his application seeking appointment of the AEO, Pattambi as the Manager of the School and removing the 6th respondent as the Manager has been rejected by the Government.

2. The Trust in question was formed by Ext.P1 Trust deed registered on 10.2.1995. Subsequent to the registration of Ext.P1 Trust deed, the Trust purchased the School in question. Ext.P2 bye-laws framed for the management of the School was approved by the Educational Authorities. As per the bye-laws, the term of appointment of the Manager was three years. The appointment of the 6th respondent as the Manager of the School was approved by the Educational Authorities by Ext.P3 order dated 30.11.1998. According to the petitioner, when some of the

other trustees resigned, new trustees were inducted into the Trust and a supplemental trust deed was executed which is Ext.P6 dated 26.11.2001. By the same, the number of trustees was increased to 19. The three year term of the 6th respondent as the Manager of the School expired on 24.9.2001. But, for want of appointment of a fresh Manager, the 6th respondent continued to function as the Manager of the School.

3. The petitioner would contend that the 6th respondent resigned as a member of the Trust on 15.10.2003 by Ext.P7 and his accounts were also settled by paying an amount of Rs.12,50,000/- by cheque dated 15.11.2003, a copy of which is produced as Ext.P19. Subsequently, on 13.7.2004 the 6th respondent filed Ext.P8 application before the Director of Public Instruction for change of Manager with transfer of ownership of the School to a new Trust by name Cheriyavappuhaji memorial Educational Trust. By Ext.P10 order dated 30.11.2004 the Director of Public Instruction rejected the application on the ground that the document of transfer of ownership cannot be relied upon. This Court in a writ petition filed by the 6th respondent directed the DPI to reconsider the matter again. By Ext.P11 dated 25.10.2005 the

DPI again rejected the same. Thereafter the petitioner filed Ext.P12 petition dated 18.1.2006 to the Government to appoint one of the officers of the Education Department as the Manager of the School. The same was forwarded by the Government to the DPI. By Ext.P13 order, the Director of Public Instruction appointed the AEO as the Ex-officio Manager of the School till a new Manager is appointed. In W.P.(c) No.14168 of 2006 filed by the 6th respondent by Ext.P14 judgment dated 28.6.2006, this Court set aside that order on the ground that the DPI had no jurisdiction to decide the issue. Thereafter the petitioner moved the Government for the same relief and by Ext.P15 (a) order, the Government rejected the application inter alia on the ground that the petitioner had resigned from the membership of the Trust. The same is under challenge in this writ petition.

4. The petitioner would contend that he never resigned from the membership of the Trust. According to him, the document relied upon for this purpose is a forged document. He submits that he had moved the Ottappalam Munsiff's Court for injunction restraining the 6th respondent from interfering with the properties of Trust by filing O.S.No.469/05. In that suit the 6th respondent produced a document to prove that the

petitioner had resigned from the Trust. Alleging that, that document is a forged document, the petitioner moved the Munsiff for action under Section 340 of Criminal Procedure Code. Simultaneously, he filed a Criminal Complaint also before the Chief Judicial Magistrate. Pursuant thereto, Crime No.635/06 was registered by the Pattambi Police Station, which is also pending. The petitioner's contention is that since the finding that the petitioner resigned from the Trust is based on a forged document, Ext.P15(a) order should be quashed and an Officer of the Education Department should be appointed as the Manager of the School.

5. The 6th respondent has filed a counter affidavit refuting the contentions raised by the petitioner. He also denies that he has resigned from the Trust. According to him, although he was a party to Ext.P6 supplemental Trust Deed, he was under the belief that the same was for the purpose of starting a new Engineering College and knowing the oblique intentions of the petitioner he had withdrawn from that Trust pursuant to which only he has given Ext.P7 resignation letter. He would further explain that Ext.P19 is not a cheque for settlement of his rights in the Trust but that was only the return of the amounts advanced by him towards establishment

of an Engineering College which is evident from the fact that Ext.P19 is not issued by the Trust formed as per Ext.P1 but by "the Chairman/Secretary/Treasurer for Al-Ameen Engineering College". He would submit that he never resigned from the Trust constituted by Ext.P1 and he continues to be a member of the Trust and the Manager of the School. He would point out that going by Ext.P1 Trust deed new members have to be nominated by the existing trustees. No resolution was adopted by the Trust for nominating new trustees, instead Ext.P6 document has been brought into existence by which apart from the petitioner and the 6th respondent, who were two of the original trustees, 17 other trustees also joined to execute the so called supplemental Trust deed. The new trustees would get authority to sign a supplemental Trust deed on behalf of the Trust only after they are validly nominated by the other trustees. However, the 6th respondent asserts that the petitioner has resigned from the membership of the Trust and therefore he has no locus standi to challenge the right of the 6th respondent to continue as Manager of the School.

6. Respondents 7 and 8 who were two of the original trustees as per Ext.P1 Trust deed has come forward with impleading petitions and got themselves impleaded as

additional respondents 7 and 8. In their affidavits in support of the impleading petition, they also have asserted that they have not resigned from the membership of the Trust.

7. Respondents 1 and 4 have also filed counter affidavits supporting Ext.P15(a) order. According to the learned Government pleader, the Educational Authorities are not concerned with inter-se dispute between the petitioner and 6th respondent in the matter of administration of the Trust. Tthey are only concerned with the management of the School. They cannot also decide the correctness or otherwise of the resignations of either the petitioner or the 6th respondent. As per their records, the 6th respondent continues to be the approved Manager of the School and there is no valid application by the Educational Authority seeking to replace the Manager. They would further submit that as is stated in the impugned order, there is no mismanagement in the Schools and therefore no action is necessary under Section 14 and Rule 1 of Chapter XX of the Kerala Education Act and Rules. They would further submit that no pupil, parent or teacher of the School had raised any complaint regarding the management of the School and the School, its building and properties are in good condition.

8. I have considered the rival contentions in detail. Pleadings of both the petitioner and the 6th respondent leave much to be decided. The pleadings reveal that there are many loose ends which could not be explained by both parties. This is compounded by the fact that respondents 7 and 8 who are members of the Trust originally constituted by Ext.P1 deed, have denied that they have resigned from the Trust by filing affidavits before this Court. Although the 6th respondent disputed the authenticity of Ext.P6 supplemental deed, he does not dispute that he also has signed the same. The 6th respondent has produced Exts.R6(a) and R6(b) dated 23.10.2003 and 23.9.2004 respectively in which respondents 7 and 8 and another Sri. Ummer have also signed Minutes of the meeting of the members of the Trust. The said Ummer is also a member of the trust as per Ext.P1. In Ext.P6 document that Ummer is not a party. The petitioner although produced the resignation of respondents 7 and 8, he has not chosen to produce the resignation of the said Ummer. These are all only some of the discrepancies which immediately attracts the attention. There are others also which I do not wish to detail in this judgment. However, these are sufficient to hold that both the petitioner as well as the 6th respondent have not

chosen to reveal the entire facts relating to the issue before this Court.

9. As such, I am not inclined to accept either of the versions of the petitioner or the 6th respondent in the matter. I am also not inclined to go into their disputes in this writ petition since they have to settle their disputes in a validly constituted suit, especially since disputed questions of facts ascertainment of which requires adducing of evidence are involved. This Court is now concerned only with the proper functioning of the School and Ext.P15(a) order. In Ext.P15(a) order it is categorically stated that there is no mismanagement of the School, that nobody has any complaint of mismanagement and that the School buildings and its properties are in good condition and therefore no action is required as per the provisions of the Kerala Education Act and Rules. The dispute between the petitioner and the 6th respondent or other trustees has to be resolved by resort to a civil suit. It appears that the petitioner has already moved the Civil Court by filing O.S.No.469 of 2005. Since the School is now being run properly, the interest of the students and teachers are properly safeguarded. Therefore, I am of opinion that no action is called for under the provisions of the Kerala

Education Act and Rules for taking over the management of the School, at this juncture.

10. In the above circumstances, I am satisfied that the interest of the School is well protected by the present situation pending settlement of disputes by the parties regarding the right of management of the School. In that view no interference is called for in Ext.P15(a) order.

Accordingly, W.P.(c) No.5886/07 is dismissed.

W.P.(c) No.5955/07

This writ petition is a belated challenge against Ext.P11 order produced in W.P.(c) No.5886/07, filed by the 6th respondent in that writ petition. The learned counsel for the petitioner, in W.P.(c) No.5955/07, seeks permission to withdraw the writ petition. Accordingly, W.P.(c) No.5955/07 is dismissed as withdrawn.

S. SIRI JAGAN, JUDGE

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